

MODIFIED 7/5/16

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

JOHN E. YOUNGS

Respondent

v.

NOAH CONLEY, A MINOR, STACEY CONLEY, HIS NATURAL MOTHER, JAMIE
CONLEY, HIS NATURAL FATHER

Appellants

DOCKET NUMBER WD78515 and WD78601

DATE: May 10, 2016

Appeal From:

Circuit Court of Clinton County, MO
The Honorable Daren Lee Adkins, Judge

Appellate Judges:

Division Two
Victor C. Howard, P.J., Thomas H. Newton, and Karen King Mitchell, JJ.

Attorneys:

Richard Rollings, Jr., Camdenton, MO
Samuel Wendt, Kansas City, MO

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Co-Counsel for Appellants

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Counsel for Respondent
Co-Counsel for Respondent
Co-Counsel for Respondent
Co-Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

JOHN E. YOUNGS, Respondent, v. NOAH CONLEY, A MINOR, STACEY CONLEY,
HIS NATURAL MOTHER, JAMIE CONLEY, HIS NATURAL FATHER, Appellants

WD78515 and WD78601

Clinton County

Before Division Two Judges: Howard, P.J., Newton, and Mitchell, JJ.

The underlying personal injury claims of Conley against Youngs arise from an accident in which Youngs's pickup truck struck Conley who was walking to school. At the time of the collision Youngs's insurance company extended a settlement offer to Conley for the policy limit. Conley's counsel responded demanding the policy limit in exchange for a release of Youngs. Young's counsel responded accepting the settlement terms and requesting additional information. Youngs's counsel sent an additional confirmation e-mail confirming the settlement and requesting additional information. Conley's counsel replied stating they were working on gathering the requested information. After additional communication Young's counsel provided a proposed settlement document for Conley's approval. After reviewing the documents Conley's counsel replied that the proposed agreement constitute a counteroffer which they rejected. Youngs's counsel then explained that the proposed document did not contain an altered material term, thus it was not a counteroffer. Youngs filed a petition for enforcement and Conley filed a petition for damages. During a hearing the cases were consolidated and the court found that a valid settlement existed between the parties. After the parties signed the release and Youngs tendered a check for Conley the court entered the case dismissed with prejudice. Conley appeals.

AFFIRMED.

Division Two holds:

Conley argues that the trial court erred in ruling that an enforceable agreement existed between the parties because Youngs's alleged acceptance created a counteroffer by including additional terms. We disagree.

A valid settlement agreement requires an offer, acceptance, and consideration. In addition, the agreement requires a mutual assent to the material terms of the agreement. A term is deemed material based on the agreement, its context and the conduct of the parties. At trial the parties presented evidence of their communications. The trial judge determined that the communications provided portrayed a clear offer and acceptance, meaning a valid settlement agreement existed. Furthermore, the court ruled that based on the conduct of the parties, the additional requested information and changes in the inclusion of the indemnified parties did not constitute a material term, meaning the request was not a counteroffer and was instead a valid acceptance.

Therefore, we affirm.

Opinion by Thomas H. Newton, Judge

May 10, 2016

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